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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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IM62/0801

EXAMINER

FIGUEROA, J

ART. UNIT	PAPER NUMBER
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1772

DATE MAILED:

08/01/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

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Office Action Summary

Application No.
09/284,024

Applicant(s)

Dellus

Examiner

John J. Figuer a

Group Art Unit

1772



☐ Responsive to communication(s) filed on _____

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 35 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claim

☒ Claim(s) 1-11 is/are pending in the application.
Of the above, claim(s) _____ is/are withdrawn from consideration

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1-11 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☒ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of References Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 4

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

— SEE OFFICE ACTION ON THE FOLLOWING PAGES —

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DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The preamble to claim 1 is confusing as to whether or not the "biaxially stretched", "thermoset", "tubular" and "seamless" terms also limit the *multiple layer* casing.

The claims are also indefinite because it is unclear from the claim language what the phrases "hard" aliphatic polyamide blocks and "soft" aliphatic polyether blocks encompass. The terms "hard" and "soft" as used in claim 1 are relative terms which renders the claims indefinite. The terms "hard" and "soft" are not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

Additionally, claim 1, line 7, recites the phrase "*which* block copolymer". The cited claim language is ambiguous as to whether the phrase is referring to the whole block copolymer or, if in the alternative, it is referring to the "hard" and/or "soft" block copolymer components.

Moreover, it is extremely unclear from claim 1 what the chemical formula for (II) is.

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Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Korlatzki (GB 2035198 A) in view of Frey (US 5,840,807).

The instant claims are drawn to, *inter alia*, a multilayered food casing having a layer comprising a block copolymer having aliphatic polyamide and aliphatic polyether components. Dependent claims 2-11 recite, among other things, glass transition temperatures for the polyamide block components, the polyamide blocks comprising polycaprolactam and the polyether blocks are polyethylene glycol (PEG); the block copolymer layer further comprising pigments and/or a copolyamide such as nylon 12; and the casing comprising additional polyolefin or polyamide layers; the casing being stretched by a specified ratio and formed by co-extrusion or blow molding.

Korlatzki discloses a biaxially stretched, blow-extruded, tubular, multilayered film casing comprising a polyamide film further comprising polycaprolactam and polyolefins. (*See* Abstract; page 1, lines 7-17; page 2, lines 21-86; page 4, lines 99-125; Example 1-5; claims 1-4 and 15).

However, Korlatzki does not disclose the claimed block copolymer.

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However, Frey teaches a food package, having excellent fruit and meat preservation properties due to the respective permeability ratios of the film to oxygen and carbon dioxide, said package comprising a thermoplastic film having a layer comprising a block copolymer having polyamide and polyether block components; wherein the polyamide block components may comprise lactam derivatives whereas the polyether block components may comprise PEG. (See Abstract; col. 1, lines 10-14; col. 1, line 40 to col. 2, line 33; col. 2, lines 51-67; col. 3, lines 6-12; col. 6, line 51 to col. 8, line 25)

Frey also teaches the film further comprising polyamide 12, polyethylene and/or UV agents; whereas the film may be laminated on to a polyethylene substrate. (Col. 3, lines 29-63; col. 4, lines 31-55; col. 5, line 18-37; Examples on col. 5-6)

Therefore, it would have been obvious to a person skilled in the art at the time Applicant's claimed invention was made to use Frey's polyamide block copolymer as the polyamide in Korlatzki's biaxially stretched, tubular film casing. One skilled in the art would have been motivated to do so in order to incorporate Frey's teachings and attain a resultant multilayered tubular film casing, having optimized oxygen and carbon dioxide permeabilities, which in turn enhances the fruit and meat content's conservation characteristics.

Although Korlatzki and Frey are silent as to the glass transition points for the various block copolymer components, it is the Examiner's position that since Korlatzki and Frey disclose the same exact multilayer block copolymer film as claimed by Applicant, then accordingly both multilayered films must inherently possess the same physical properties.

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Conclusion


5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John J. Figueroa whose telephone number is (703) 305-0582. The Examiner can normally be reached on Monday through Thursday from 8:00 a.m. to 5:30 p.m. The Examiner can also be reached on alternate Fridays.

If the attempts to reach the Examiner are unsuccessful, the Examiner's supervisor, Ellis P. Robinson can be reached by dialing (703) 308-2364. The fax phone number for the organization where this application is assigned is (703) 305-5408.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group Receptionist whose phone number is (703) 308-0661.

jif 

July 26, 2000


Ellis Robinson
Supervisory Patent Examiner
Technology Center 1700